

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Larry & Susan Moore,

Petitioners-Appellants,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

Docket No. 10-77-0079

Parcel No. 010/01914-016-000

On April 11, 2011, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants Larry and Susan Moore were represented by Attorney Phil Watson of Des Moines. The Polk County Board of Review designated Assistant County Attorney Anastasia Hurn as its legal representative. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Larry and Sue Moore are the owners of a residentially classified, single-family residence located at 2876 Druid Hill Drive, Des Moines, Iowa. The property is a one-story townhome-style condominium, built in 1999. It has 2501 square-feet of total above-grade living area. The property has a 2311 square-foot, walk-out basement with 1600 square feet of living-quarters finish. There is also a 602 square-foot, three-car, attached garage; a 156 square-foot deck; a 169 square-foot patio; and a 48 square-foot open front porch.

The Moore's protested to the Polk County Board of Review regarding the January 1, 2010, assessment of \$457,600, allocated as \$49,000 in land value and \$408,600 in improvement value. The January 1, 2010, assessment of the Moore's property did not change from the prior year's assessment.

The Moore's petition to the Board of Review was on the single ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). They asserted in their petition that the correct total value of his property is \$400,000, stating "that is what (we) paid for the property." The Moores did not attach any evidence to the petition and they did not request a hearing with the Board of Review.

After consideration of all the data, the Board of Review granted partial relief, reducing the total assessment to \$440,100, and stating "the assessed value of this property was changed because there has been a change in value since the last reassessment."

The Moore's then reasserted their claim of over-assessment to this Board and added the following grounds: that the assessment is not equitable as compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a) and that there has been a change in value since the last assessment under sections 441/37(1) and 441.35(3). We will not consider the claim of equity as no new grounds may be raised that were not pled to the Board of Review.

Because the Board of Review changed the value of the Moore's property citing a change in value since the last reassessment, we find the Board of Review acquiesced to the ground that there has been a change in value since the last assessment. See *Security Mut. Ins. Assn' v. Bd. of Review of City of Ft. Dodge*, 467 N.W.2d 301, 305 (Iowa Ct. App. 1991); *White v. Bd. of Review of Polk County*, 244 N.W.2d 765,769 (Iowa 1976). Because there was no change in value from the previous assessment the only ground we will consider on appeal is that there has been a change in value since the last reassessment, as it is the only ground appropriately pled in an "interim year" when the assessor has not changed the assessment.

At hearing, the Moores provided a one-page warranty deed for the subject property showing the transfer from Hubbell Realty Company to the Moores. No one testified. It appears the Moores intend to stand on their position that what they paid for the property is the market value. We note that while the sales price of a property in a normal transaction may be an indicator of market value, it does not conclusively establish that value. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996).

The Board of Review also had no witness. The certified record is limited. The Board of Review's appraiser analysis references two properties located at 2840 and 2856 Druid Hill, however there were no property record cards and no comparative analysis of these properties. The analysis states that:

2856 Druid Hill has the same floor plan as the subject and sold one year later in April 2010 for \$440,000 and was also purchased from Hubbell Realty. 2840 Druid Hill has the same floor plan plus more basement finish and is currently on the market asking \$499,900.

A listing for 2840 Druid Hill was included in the certified record.

The Moore's fail to offer support for the January 1, 2010, market value of the property. Further, they fail to provide evidence in support of a January 1, 2009, market value. Unlike a claim of over-assessment, both values are necessary to establish a change in value since the last assessment.

Based upon the foregoing, we find insufficient evidence has been presented to support a claim of downward change in value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the


property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

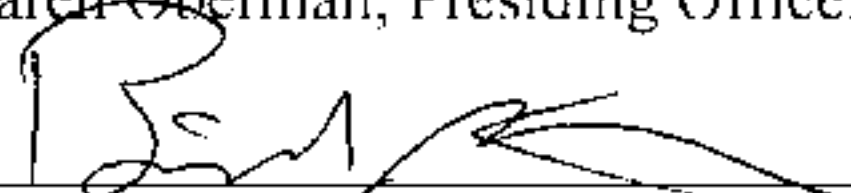
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

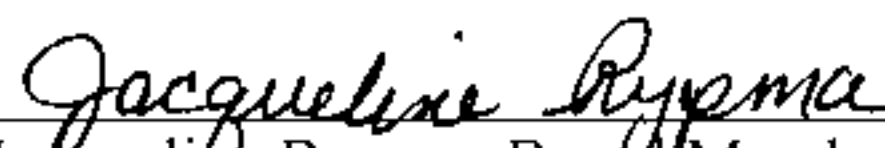
In a non-reassessment or "interim" year, when the value of the property has not changed, a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). The last unnumbered paragraph of Iowa Code section 441.37(1) and its reference to section 441.35(3) give rise to the claim of downward trend in value. For a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451. The Moore's did not provide sufficient evidence supporting of either the January 1, 2010, market value or the January 1, 2009, market value. Both values are required to support a claim of change in value.

THE APPEAL BOARD ORDERS the assessment of Larry and Sue Moore's property located at 2876 Druid Hill Drive, Des Moines, Iowa, of \$440,100 as of January 1, 2010, set by the Polk County Board of Review, is affirmed.

Dated this 27 day of May, 2011


Karen Oberman, Presiding Officer


Richard Stradley, Board Chair


Jacqueline Rypma, Board Member

Cc:

Phil Watson, PC
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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-27</u> , 2011	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	